

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Daniel E. ALESSI et al.

Serial No. 09/920,860

Art Unit: 3767

Filed: August 3, 2001

Examiner: Gray, Phillip A.

For: NEEDLE SAFETY DEVICE
WITH TORTUOUS PATH

Atty Docket: 0100/0129

PETITION FILED PURSUANT TO 37 CFR 1.181(a)(3)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Petition is filed along with the Request to Reinstate the Appeal for this case, and in particular to request the Group Director to order the examiner to respond with an Examiner's Answer and forward this case to the Board of Appeals for adjudication in light of the following:

1. This application was filed on August 3, 2001 with claims 1-26.
2. In response to a Restriction Requirement dated September 6, 2002, applicants elect for prosecution claims 1-3, 5-12, 14-20 and 22-26.
3. In response to an Office Action dated November 13, 2002, an amendment was filed on February 12, 2003. Typographical errors and claim 6 were amended in the amendment.
4. In response to a final rejection Office Action dated May 6, 2003, a first Notice of Appeal was filed on July 25, 2003.

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5. A first Appeal Brief was filed on September 22, 2003.
6. An Office Action dated March 16, 2004 reopened the prosecution of the case. A new reference was relied upon by the examiner.
7. In response to the March 16, 2004 Office Action, a Request for Reinstatement for Appeal and a second Appeal Brief were filed on June 15, 2004.
8. Subsequent to a Status Inquiry filed on April 9, 2007 requesting the status of the appeal, an Office Action dated July 6, 2007 citing new references for rejecting the pending claims once again reopened the prosecution of this case.
9. In response to the Office Action of July 6, 2007, a second Request for Reinstatement of Appeal and a third Appeal Brief were filed on October 1, 2007.
10. The latest Office Action dated February 5, 2008 once again reopened prosecution of this case. Aside from some minor changes and the citing of an addition new reference for rejecting a dependent claim, the main rejection in the Office Action of February 5, 2008 remains essentially the same as that in the Office Action of July 6, 2007.
11. Filed concurrently with this Petition is the third Request for Reinstatement of the Appeal and the fourth Appeal Brief for appealing the latest rejection by the examiner.

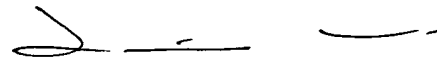
From the above, it should be clear that substantial prosecution has taken place in this case. That by itself may not be troubling. However, it appears, at least to the

applicants, that the *modus operandi* of the examiners in charge of this case is to reopen the prosecution of this case every time the applicants appeal their rejections.¹ This is particularly glaring in light of the latest Office Action in which the only difference, at least as it appears to the applicants, is the citing of a minor secondary reference for rejecting a dependent claim.

This case, as noted above, was filed in 2001. Almost seven years have gone by and three previous appeals filed. Yet it appears to applicants that the examiner continues to try to prevent this case from going to the Board of Appeals for a final resolution.

In view of the foregoing, the Director is respectfully requested to exercise his supervisory authority to order the examiner to respond to the latest Appeal Brief with an Examiner's Answer, so that this case may be forwarded to the Board of Appeals for an objective adjudication of the merits of the claims on Appeal.

Respectfully submitted,



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Phone: (703) 299-4090

Date: May 5, 2008

¹ The first and second appeals were filed in response to rejections from a prior examiner in charge of this case.



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Appellant:	Dan Alesi et al.)	
Serial No:	09/920,860)	Art Unit: 3767
Filed:	August 3, 2001)	Examiner: Gray, Phillip A.
For:	NEEDLE SAFETY DEVICE WITH TORTUOUS PATH)	Attorney Docket: 0100/0129

TRANSMITTAL OF PETITION FEE


Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

Sir:

The Commissioner is hereby authorized to debit the Petition Fee of \$130.00 from Deposit Account No. 50-0501.

The Commissioner is hereby further authorized to debit funds from Deposit Account No. 50-0501 if the amount shown above is insufficient. Conversely, any overpayment should be credited to the same account. A duplicate copy of this Transmittal Letter is attached herewith.

Respectfully submitted,



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Date: May 5, 2008